Supreme Court, U.S.
FILED
NOV 30 1988
JOSEPH F. SPANIOL, JR.
CLERK

(7)

No. 112, Original

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

STATE OF WYOMING,
Plaintiff,

vs.

STATE OF OKLAHOMA,
Defendant.

ANSWER OF THE STATE OF OKLAHOMA

ROBERT H. HENRY
ATTORNEY GENERAL OF OKLAHOMA

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ATTORNEYS FOR DEFENDANT

November, 1988
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ANSWER

The Defendant State of Oklahoma by and through its attorney, Robert H. Henry, Attorney General of Oklahoma, answers the allegations of the Plaintiff's Complaint as follows:

1. The Defendant specifically denies each and every material allegation of the Plaintiff's Complaint except as specifically admitted hereafter.

2. The Defendant admits the allegations contained in paragraphs I and II of the Plaintiff's Complaint.

3. The Defendant admits that Plaintiffs are seeking relief by asking this Court to exercise its original jurisdiction over controversies under Article III, § 2, cl. 2, of the Constitution of the United States as referred to in paragraph III of the Plaintiff's Complaint. The Defendant denies that this case is appropriate for the exercise of the original jurisdiction of the United States Supreme Court.

4. As to the allegations in paragraph IV of Plaintiff's Complaint, the Defendant admits that Wyoming-based coal producers provide a significant percentage of the coal produced in the

United States which is shipped by rail. The State of Wyoming is not a producer of coal. While the Defendant does not have sufficient information to admit that a specific number of tons was purchased by Oklahoma utilities in 1986, the Defendant admits that Oklahoma utilities purchased several million tons.

5. As to the allegations contained in paragraph V of the Plaintiff's Complaint, the Defendant admits that Wyoming imposes a severance tax on the extraction of coal within its borders and that Wyoming based producers sell their coal in interstate commerce. The Defendant denies that Wyoming's severance tax is assessed on the sale of coal.

6. As to the allegations contained in paragraph VI of the Plaintiff's Complaint, the Defendant admits that the Plaintiff derives significant revenue from its severance tax. The Defendant denies the tax is imposed on the sale of coal. The Defendant denies that Oklahoma utilities pay Wyoming's severance tax. The tax is levied on the extraction of coal which is paid by coal producers.

7. As to the allegations contained in paragraph VII of the Plaintiff's Complaint, the Defendant admits that § 939 of Title 45 of the Oklahoma Statutes generally requires Oklahoma utilities to obtain up to 10% of their coal requirements from coal mined in Oklahoma, however, the Defendant submits that several conditions must be

met before such a percentage is absolutely required.

8. As to the allegations contained in paragraphs VIII and IX of Plaintiff's Complaint, the Defendant has insufficient facts with which to determine the truth or falsity of most of these allegations and, therefore, denies same. The Defendant specifically denies that the purpose of §§ 939 and 939.1 of Title 45 of the Oklahoma Statutes is to promote economic development in Oklahoma. The Defendant also denies that these statutes are responsible for any alleged injury to the local governments of Wyoming as the Plaintiff itself has designed the severance tax structure to fund local projects. The Defendant denies that the Plaintiff has

standing as "parens patriae" since the local governments of Wyoming are not engaged in the commerce alleged to be affected.

9. The Defendant denies the allegations of paragraphs X, and XI of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

In addition to fully answering the allegations of Plaintiff's Complaint, the Defendant would further assert the following affirmative defense. The Plaintiff State of Wyoming has no legal standing to challenge the constitutionality of §§ 939 and 939.1 of Title 45 of the Oklahoma Statutes on Commerce Clause grounds as the State of Wyoming is not directly injured by the Oklahoma statute, is not a participant in the commerce allegedly affected as a

producer or consumer of coal nor are the citizens or local governments it is allegedly protecting as parens patriae. This Court, therefore, lacks subject matter jurisdiction over the State of Wyoming's claims.

WHEREFORE, the Defendant having fully answered, requests that this Court:

a. Deny any affirmative relief requested by the Plaintiff;

b. dismiss the Plaintiff's Complaint;

c. grant the Defendant any other appropriate relief to which it they may be entitled and which this Court may deem just and equitable.

DATED this 30th day of November, 1988.

STATE OF OKLAHOMA.

Respectfully submitted,

ROBERT H. HENRY
ATTORNEY GENERAL OF OKLAHOMA

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